POWERS AND DUTIES

OF

RAILWAY POLICE.

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POWERS AND DUTIES OF RAILWAY POLICE.

From Captain P. Harris, Assistant Inspector General, Railway Police, to Lieutenant Colonel Younghusband, C. S. I., Officiating Inspector General of Police, Punjab,—No. 230, dated 7th April 1870.

Enquires what the procedure should be in the case of a passenger travelling without a ticket, and who, on completion of his journey, is unable to pay. Is the Station Master justified in detaining him until he does pay, or in keeping jewels or other property in pledge, or in demanding payment in kind instead of money? No provision appears to have been made for such cases in the Railway Act, and if a man is detained by the Police, can the Station Master release him on the fare being paid?

From Lieutenant Colonel Younghusband, C. S. I., Officiating Inspector General of Police, Punjab, to the Assistant Inspector General Railway Police, No. 1046, dated 11th April 1870.

SIR,—I have the honor to acknowledge receipt of your No. 230 of the 7th April, regarding police procedure in cases of non-payment by passengers of Railway fares.

2. You do not, in stating the case you have referred, mention whether the passenger in question merely omitted to pay his fare under Section I of Act XVIII of 1854, or *fraudulently* neglected to pay under Section III of the same Act.

3. With regard to the arrest of a passenger who travels without payment of fare and obtaining a ticket, Section XXIV of the Railway Act provides that "if any person shall commit any offence hereby made "punishable by fine, and the name and address of such person shall be "unknown, or there be reason to believe that the offender will abscond, any "officer or servant of the Company, or any Police officer or other person "whom such officer or servant may call to his aid, may, without any warrant "or written authority, lawfully apprehend and detain such offender until "he can be taken before a Magistrate or other officer having jurisdiction "over the offence, or shall give sufficient security for his appearance before

" such Magistrate or other officer, or shall otherwise be discharged by due " course of law." Section XXXVI provides that " payment of any fare to " which any passenger not producing or delivering up his ticket shall be " liable under Section I of this Act, may be enforced in the same manner " as any fine imposed by this Act."

4. You will observe that the Police can, under the provisions I have quoted, arrest and detain upon certain conditions persons who fraudulently travel without payment. This position is supported by the decision in the case of *Goff* v. *Great Northern Railway Company*, (30 L. R. Queen's Bench, 148)

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5. Whether the police would be justified in arresting a person who had paid his fare, and was unable to produce his ticket, seems an undecided point * * * * * * * *

6. The second question raised in your letter, regards the lien the Railway Company has on the goods it carries. The Act specially provides, by Section XII, for the detention and sale of goods where the sum due for their conveyance is not paid. It is silent as to the detention of goods to defray payment of a passenger's fare. Under the Act his luggage could be detained, unless its conveyance had been paid for.

7. In Addison on Torts (page 410) you will find the following passage :—" A common carrier of passengers and luggage has a right of " lien upon the luggage for the payment of the price of the carriage of the " passenger, as well as of his effects, but he has of course no right to detain " the person of the passenger or the clothes he is actually wearing" (*Wolf* v. *Summers*, 2 Campbell 631). Railway Companies are common carriers, with the advantages contained in Sections 9, 10 and 11 of Act XVIII of 1854—see Section X of Act III of 1865. Thus the seizure of jewels actually worn by the passenger to be held under a carrier's lien was illegal.

8. You should carefully warn your police that they have no power to arrest persons (Consignees or Agents) who come to receive goods and do not pay, or refuse to pay the amount due for the conveyance of them. Section XII of Act XVIII of 1854 enacts the procedure, which is analogous to the English law, to be followed. The decision of the Court of

Queen's Bench in *Poulton* v. *the London and South Western Railway* (II L. R. Q. B., 534) expressly lays down the procedure I have just communicated.

9. With reference to the distinction between Sections I and III, the judgment in *Dearden* v. *Townsend,* (1 L. R., Q. B., 10) seems much to the point. It was there laid down, that a bye-law (very similar to Section I of Act 18 of 1854) only applied to the case of a person having and wilfully refusing to produce or give up his ticket, and not to the case of a person travelling without having paid for and obtained a ticket, with no intention to defraud the Company.

From Captain P. Harris, Assistant Inspector General Railway Police, to Lieutenant Colonel Younghusband, C. S. I., Officiating Inspector General of Police Punjab, No. 312, *dated* 12*th May* 1870.

With reference to his No. 1206, dated 29th ultimo, forwards, for information, the Agent's opinion (No. 1980 of 9th instant) regarding the lien held by the Railway Company on the goods of passengers' for payment of fares. A copy of undersigned's letter detailing the points at issue is also sent; and as the Agent's opinion by no means clears up the point, would suggest that the matter be referred for decision to the Government Advocate.

From Assistant Inspector General Railway Police, to Major General Abbott, Agent Punjab and Dehli Railways, No. 289, *dated 2nd May* 1870.

Sir,—I beg to forward for your perusal, correspondence regarding Police procedure in cases of non-payment by passengers of railway fares, and the extent to which Station Masters are justified in interfering in such cases.

2. The Inspector General of Police suggests that the point referred to in the 5th para : of his letter be referred to the Legal Advisers of the Company for opinion, and as it is a matter of daily occurrence, perhaps it would be well to submit the whole question to that officer.

3. What occurs in practice is as follows, and I should be glad to be informed of the correct procedure in each case.

1st.—A passenger arrives without a ticket, having attempted to defraud the Company. His name and address being unknown, he is made over to the Police. Subsequently he offers payment. Can the Station Master accept this payment after arrest of offender, and can the accused then be let go without being brought before a Magistrate?

Section III, Act XVIII of 1854.

2nd.—In the event of a passenger having lost his ticket, and having no intention to defraud the Company, but having no funds to pay a second time, is the Station Master justified in causing his arrest, and if so, can he be discharged from that arrest without the orders of a Magistrate? If the Police are not justified in arresting, then how are the Company to recover the amount of fare?

Section I, Act XVIII of 1854.

3rd.—Is a Station Master justified in keeping jewels or other personal property of any kind in pledge for the payment of fares, or, in the case of a passenger pleading inability to pay in money, can he demand payment in kind, in the shape of property in the possession of the passenger?

4th.—To prevent delay, a passenger arriving without a ticket is made over to a Policeman until all the tickets have been collected and his case can be attended to. Does this amount to an arrest? It frequently happens that a passenger so situated is willing when the Station Master has leisure to attend to him to pay up, but having been made over to the Police, it is a question whether his case can then be so disposed of.

From Agent Punjab and Dehli Railways, to the Assistant Inspector General Railway Police,—No. 1980, *dated Lahore,* 9*th May* 1870.

Sir,—I have the honor to acknowledge receipt of your No. 289 of 2nd instant, and enclosure from the Officiating Inspector General Police, regarding police procedure, and suggesting the submission of the several questions at issue to the Company's legal adviser, I will take up each point in succession.

A person arrested for attempt to defraud the Company, having taken no ticket, is arrested and subsequently offers payment. Can he be released on payment without being brought before a Magistrate? It appears to me the duties of the Police are clear in this case, the Police are entertained and paid by the Company for enforcing the Act in question. They are bound to support the Station Master in his demand for legal payment, and to detain the party until he has satisfied the lawful claim. If before removal from the platform the party satisfies the Station Master by payment, there is no reason why the Company should prosecute before a Magistrate, and it is undoubtedly the duty of the Police to release him. If the Police cannot do this, it is a frightful encumbrance to the Railway.

Section III, Act XVIII of 1854.

2. In the event of a passenger having lost his ticket, being detained by Police at instance of Station Master until other tickets are taken, and he can enquire into the case, he can most assuredly be released by the Police on payment of the fare, provided Police have not removed him from the platform or premises of the Company. To commit him to a Magistrate would be ridiculous, and if the Police cannot lawfully do this, it is not a fitting instrument to carry out Act XVIII, and must be dispensed with.

3. Is a Station Master justified in keeping jewels or other property in pledge for payment of fares? I reply most decidedly that he cannot demand any such pledge, but must make over the person to the *Police*; or in the instance of a passenger pleading inability to pay in cash, can Station Master demand payment in kind? I reply certainly not. It is quite against rule, but it has occasionally, as a convenience to prevent parties being taken before a Magistrate, happened that a Station Master has accepted from some well known party, some article of sufficient value in pledge for promised payment. It would be against rule, but not *unlawful*, and might save great inconvenience to parties concerned, but must be entirely optional with both the Station Master and passenger, and on the personal responsibility of the former.

The 4th question is, whether a passenger arriving without a ticket, is detained by a Policeman until tickets have been collected, and his case

attended to by the Station Master, whether it amounts to arrest, and consequently requires the parties to be sent to the Magistrate, adjusted or not adjusted? My reply is that every shopman has a right to detain a customer until he pays over the counter, and having done so, to commit *him to a Magistrate would be the extreme of absurdity; the Police are* paid to aid the Railway Company (the shopman in collection of their dues) and to commit such a case to a Magistrate would be as absurd as in the instance of shopmen.

There is not one of these cases that appears to me to require the opinion of my legal adviser, but if you are unable to aid this Company in acting in all these cases as I have indicated, it will be to their interest to close engagement with the Government Police at the earliest opportunity.

If the Inspector General of Police makes objection to your enforcing the Act XVIII, and conforming to the instructions conveyed to you by the Agent of the Company, he is at liberty to refer the case to the Government for legal opinion. I see no occasion to do so.

From the Inspector General of Police Punjab, to Henry Plowden Esquire, Government Advocate—No. 1450 *dated* 19*th May* 1870.

Sir,—As I have the misfortune to differ in my reading of the law with Major General Abbott, the Agent of the Railway Company, as to certain points of procedure, I have the honor to forward for your consideration, in original, the correspondence noted in the margin.

2. The first point in which I am at issue with the Agent is this. He assumes that by employing the organized Government Police the Railway Company binds its own hands. In other words, he argues that private persons have greater authority in the matter of arrests than peace officers, and that though the latter are bound by the law of Criminal Procedure, the former are not. The doctrine appears novel and unsound.

3. The other questions upon which your opinion is requested may be thus summarized :—

(a.) Can a Station Master release an arrested person except on bail?

(*b.*) If a passenger has lost his ticket, and fails to produce it, though he has committted no fraud, can he be arrested? If so, can he be released except on bail?

(*c.*) May an official of the Railway Company detain jewels or articles worn, or luggage, as a security for the payment of fare?

(*d.*) A passenger arrives without a ticket and is made over to the Police to keep on the platform until the process described in (*c*) is gone through. Is this arrest?

4. The law on most of these points appears to me well settled, but as there is a difference of opinion, I am compelled to trouble you. I will state my views on each of the points raised:—

(*a.*) The police are bound by the provisions of Section 160 of the Criminal Procedure Code, and even supposing the arrest was made by an officer of the Railway Company, the provisions of Sections 24 and 37 of Act XVIII of 1854 are precise. In cases punishable with fine only, either the police or the servants of the Railway Company may admit the offender to bail, but in cases coming under Sections 25, 26, 27 or 28 of that Act, the offender must be carried before a Magistrate, or a Justice of the Peace, and neither the police nor the servants of the Company have the power to bail. As the Police may not release except on bail, I presume private persons have no greater powers.

(*b*) Perhaps my letter to Captain Harris is not so clear on the question as to the arrest of a passenger who has lost his ticket as is desirable. Para. 9 was intended to qualify para 5. I am of opinion that the Company may not arrest a passenger who has simply lost his ticket. Mr. Addison collects the cases (* *Chilton* v. *London and Croydon Railway Company;* † *Tollemache* v. *London and South Western;* ‡ *Goff* v. *Great Northern Railway Company*) at page 496 of his work on Torts (2nd Edition) and says "these statutes do not authorize "Railway Companies, their officers or Agents, to take a person into "custody or to detain him for riding in a first class carriage with "a second class ticket, or for riding in a carriage without a ticket, or for "refusing to pay his fare when it is demanded, or for mere acts of omission, "or offences against the bye-laws." I have not the English Statutes by me to compare with the Indian Act, but I conclude the line is drawn in both

* 16 M. and W. 231.
† 26 Law T. R. 222.
‡ 30 Law J.Q. B. 148.

between accidental loss of ticket, or ignorance in travelling by a wrong class, and fraud or attempted fraud.

Mr. Addison goes on "by 8 Vict. C. 20, Sections 103, 104, a penalty is "imposed upon any person travelling on a Railway without having paid "his fare with intent to avoid payment thereof, and power is given to all "officers and servants on behalf of the Company to apprehend such person "until he can be conveniently taken before a Justice. In the ordinary "course of affairs, the Company must determine whether they will submit to "what they believe to be an imposition, or use this summary power for "their protection; and, as the decision whether a particular passenger "shall be arrested or not must be made without delay, it must be presumed "that the officers of the Company charged with the management of the "traffic, have authority to determine whether passengers are to be taken "into custody for this offence; and if by mistake an innocent person is ap-"prehended by order of a Superintendent, the Company will be answer-"able for the wrong done." The latter part of this reference will be comprised in your reply to (*a*), and I have already stated my opinion.

(c.) In paras 6 and 7 of my letter to Captain Harris, I have considered that the Railway Company has the usual lien of an unpaid vendor, not only on the goods forwarded by it, as given in the Act, for payment of the cost of carrying such goods, but on luggage or goods belonging to a passenger until he pays his fare. I am aware that it may be urged that the Act expressly gives the one, and is silent as to the other; and "*expressio unius est exclusio alternis*" yet I cannot think that that maxim is to over-ride an established principle of law; jewels or apparel actually worn at the time I believe cannot be touched, probably on the ground that they are not in the possession of the unsatisfied vendor.

(*d*) Section 91 of the Criminal Procedure Code defines arrest, and as in the cases supposed there is undoubtedly a submission to the custody, I consider that an arrest has been made.

5. The law may, or may not be inadequate in a country like India, to protect the interests of the Railway Company, but this is not the question here. The question is, what is the law, and that, having been ascertained, we cannot depart from those safeguards imposed by the legislature to protect personal liberty, and prevent acts of oppression on the part of subordinate officials.

The following opinion has been heretofore the guide to police procedure :—

No. 781, *of* 17*th April* 1869, *from H. S. Cunningham, Esquire, Government Advocate, Punjab, to E. Newbery, Esquire, Asssistant to the Inspector General of Police.*

MEMO.

The Railway Police are, I presume, appointed under Section 13 of Act V of 1861, for the purpose of affording especial protection to Railway passengers. They must therefore, in my opinion, be regarded "as persons employed by or on behalf of a Railway Company to do an act upon the Railway," and consequently fall within the definition of Railway servants in Section 29, and are no doubt empowered to remove offenders under Section 6, 7, 8, 17, and in both capacities under Sections 24 and 37— *i. e.* both as Police Officers and Railway Servants.

From H. Plowden, Esq., Government Advocate, Punjab to the Inspector General of Police, Punjab, No. 136 *of* 4*th July* 1870.

Sir,—In reply to the questions referred for opinion in your No. 1450 of the 19th May 1870, I propose to deal with the points raised in a different order to that in which they are put, but I think that in the following remarks will be found an opinion on all the matters referred.

2. To begin with question (*b.*), a passenger who has committed no fraud on the Company in regard to his fare, cannot *legally* be apprehended by a servant of the Company or by a Police officer, or by any one else.

3. A servant of the Railway Company of his own motion, and any Police officer or other person on request by a Railway servant, may, under Section 24 of the Railway Act, lawfully apprehend and detain without warrant any person who has committed an offence punishable under the Act with fine only, if his name is unknown or he is likely to abscond. Travelling without a ticket with intent to defraud is such an offence under Section 3 of the Act.

Travelling without taking a ticket or inability to produce a ticket, though a breach of the provisions of Section 1, is not an offence in the

absence of fraudulent intention. Nor does Section 36, have the effect of making an innocent act into an offence, it merely extends to the recovery of fares due under Section I, the summary procedure which has been provided by the Act for the recovery of fines.

4. It may be difficult, or even impossible, for a Railway Servant to decide, with certainty, whether or not there was a fraudulent intention on the part of a traveller who produces no ticket. But neither that difficulty, nor the utmost good faith, nor the existence of the strongest grounds for suspicion, will protect, from liability to damages, any person taking part in the apprehension or detention of a traveller, who subsequently substantiates his innocence of fraudulent intention.

5. The observations of the Court in *Dearden* v. *Townsend* (1 L. R., Q B., page 10) affirm the distinction between the breach of a mere bye-law (as Section 1 of the Act in fact is) and committing a punishable offence, (such as is defined in Section 3) and it is only in the latter case, an offence having been in fact committed, that the Act, in Section 24, permits the apprehension, and detention of the offender.

6. The case of *Glover* v. *L. and S. Western Railway Company* (3 L. R., Q. B., page 25) is also instructive on the question of the liability of Railway Officials for assaults.

7. I fully concur therefore with you that this question must be answered in the negative ; an answer which obviates the necessity of considering the second branch of the question.

8. To question (*a*.), I am of opinion that the answer must be in the affirmative, and together with this question, I propose to deal with the point raised in para. 2 of your letter.

9. Section 24 of the Railway Act is introduced for the benefit and protection of the Railway Company, and not of the public generally. The Section merely permits, it does not enjoin, a Railway servant to apprehend an unknown or absconding offender. None but a Railway servant can decide whether or not the permission given shall in any particular instance be acted upon. Any person, other than a Railway servant, apprehending of his own motion, even a fraudulent traveller, would be liable in damages for assault and false imprisonment, at the suit of the person apprehended.

10. It rests, then, in the sole discretion of the servants of the Railway to say, whether or not the power to apprehend, given by this Section, shall be exercised.

11. Supposing a Railway servant to have apprehended a traveller under Section 24, he can only detain him lawfully till be can be taken before a Magistrate, or till he give sufficient security, or be otherwise discharged in due course of law.

12. The words "till &c., to the end of the Section" merely determine the limit up to which the detention may lawfully continue, and, consequently, any detention, after any one of the three contingencies named had been satisfied, would become unlawful, and would give the traveller, guilty or innocent, a good claim for damages.

13. The provision of the Section as to "detaining," like that as to apprehending, is permissive only, and not obligatory. The words are "may lawfully apprehend and detain" not "may lawfully apprehend and *shall* detain." These words leave it optional with the Railway servant to detain or discharge a person whom he has apprehended.

14. If we turn to Section 37 we shall see what language the legislature employs when all option is to be excluded.

15. "Every person guilty" as therein specified "may be lawfully apprehended" . . . "and every person so apprehended *shall*, with all convenient despatch, *be carried and conveyed before a Magistrate &c.*"

16. The reason of the distinction is obvious. In the first case, to protect the Company's interests, its servants are permitted to apprehend persons injuring these interests, exercising their own discretion in each case, at their own and the Company's risk; and they may well be permitted to exercise a like discretion, as to wether the Company's interests does or does not require detention after apprehension.

17. But in the other case, the person apprehended has committed an offence against the public at large, and the public interest demands that judicial investigation should be made: the person apprehending has therefore no point on which to exercise, discretion, for the Legislature has decided what the public interest requires.

18. Holding, then, that a Railway servant may at his option detain or discharge an apprehended person; it may still be asked whether if he discharge him, he is bound to take security. This is, in reality, answered by the interpretation I have already put on the words of Section 24. There is nothing in the Section to render taking security obligatory, and the words "till &c.," merely point out, as I have already said, the limit up to which detention is lawful. There being nothing obligatory, then, the Railway servant's discretion remains unfettered as to what he thinks necessary for the Company's interest; and if he thinks no security necessary, he is at liberty to discharge the traveller without any recognizances.

19. I think there can be no sound contention, that the Railway servant apprehending a traveller is bound by the rules in the Code of Criminal Procedure, which are framed for, and binding, in certain cases, on the Police, but not on the public generally.

20. This suggests the next question "What are the powers and duties of a Police officer under Section 24 of the Act?"

21. I am of opinion that his powers are precisely the same as those of the Railway servant, with this one important distinction, that he can not act of his own motion, but only at the request of the Railway servant; and I further consider, that when thus set in motion, he acts, not as a Police officer, but merely as the Railway servant's agent, like any other member of the public, whose aid might have been called in.

22. In the first place, the Police officer, when his assistance is asked for by the Railway servant, is not bound to give it. There are many circumstances, under which a Police officer may be called upon to give aid to individuals, beside the cases provided for in the Criminal Procedure Code and the Police Act. When the Legislature intends to make it the duty of a Police officer to give assistance, it expressly requires him to do so.

23. Instances of this are to be found in * Act XXXVI of 1855, † Act VIII of 1851, ‡ Act XIV of 1843, and || XXXI of 1861, and others. In the present Act, the absence of any such requirement, shows that there is no obligation laid upon a Police officer to assist when called upon, and therefore it is not his duty to assist. Now, as it is only by reason of the duties and powers, with which the law clothes him, that a

* Salt Act, Sections 2 & 6.
† Tolls Act, Section 5.
‡ Customs Act, Section 13.
|| Saltpetre Act, Section 9.

Policeman differs from any private individual, and as in this instance his powers and those of any other member of the public are identical, and his duty is *nil*, he must be regarded simply as a private individual as to his acts under this Section.

24. The Police officer then, like any one else, may refuse to assist a Station Master; and it should not be forgotten, that, if he does assist, and if the apprehension or detention turn out to have been illegal, from whatever cause, he cannot successfully plead the request of the Station Master in his defence, for the Station Master could not lawfully authorize him to do an illegal Act.

25. Supposing the Police officer not to refuse but to give his aid, it appears to me, that, acting and being able to act only at the request of a Railway servant, he is simply his agent, and can lawfully act only within the limits of the authority conferred on him by the Railway servant.

26. If therefore, the authority be "to detain a traveller till the Station Master has finished collecting tickets", and the Police officer or other person detain for a longer time without a further request, I think he would be liable, from that moment, for false imprisonment; and *a fortiori* if he detain after an express request to discharge.

27. However that may be, it is clear that under Section 24, the conditions of discharge are alike for the Railway servant and for any one else: either a Police officer or other person called in, may cease to detain at any moment without taking security; but if, after accepting charge of a traveller from a Station Master, a Police officer, *of his own motion*, without security discharged the traveller, and thereby loss accrued to the Railway Company, the officer would be liable in damages to the Company; for though he might have refused to detain, yet having accepted the charge, he is bound to the Railway Company to carry it out properly.

28. You will perhaps ask, 'if the Police officer is in the same position as any other member of the public, why should he be specially named in Section 24?'

29. I think he is named for this reason, that, if he had not been specially named, a doubt might have arisen, whether he would be included in the words "any other person."

30. It must not be forgotten that, when the Railway Act was passed, only Police Officers of a certain grade could apprehend (see Section 37 of the Act), that rules were laid down for the guidance of the Police, pointing out under what circumstances they might apprehend, and absolutely prohibiting them from arresting except under these circumstances. To avoid all doubt, the words "any Police Officer" are inserted; and paradoxical as it may appear, I think the true intention of the Section is that, under the circumstances mentioned therein, a Police Officer may apprehend and detain, not by virtue of his being a Police Officer, but in spite of his being one.

31. Another argument in support of the view, that the Police Officer acts entirely in his private capacity, is derived from a comparison of Section 24 and Section 37.

32. In Section 37 the Police Officer is empowered to act *as Police officer*, that is, a Police Officer of sufficient rank, to apprehend without warrant, may, under that section, arrest without warrant, of his own motion; and his procedure thereafter is pointed out. That section refers to arrest for grave offences, under Section 24, for that whch is little else than a civil debt, at the most, any Police Officer is permitted to exercise, *on request*, extraordinary powers; which, even in the case of a grave offence, he could not exercise of his own motion.

33. The obvious inference is, that any act done by him in excess of his ordinary Police authority, is due to "*the request*," and that acting on this request, he is no longer acting as Police Officer, but as a mere agent of the person making the request.

34. The last point that can be raised is, whether the word "servant" in Section 24, reading it with Section 29, does not include a Police Officer employed on the Railway.

35. I am of opinion that it does not, for the purposes of Section 24.

36. A Police force supplied to the Railway Company, must be held to be supplied under Section 13 of the General Police Act, and that section enacts that "such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application."

37. *Railway Police, then, not being under the control of the Railway Company, cannot be regarded as " servants of the Railway " in the strict* sense of the words.

38. But the real position of a Police Officer employed by a Railway Company is, that he is to be *deemed* a Railway Servant, *quoad* certain duties which he is bound to fulfil towards the public.

39. Up to Section 24 of the Act, we find no mention of the duties of servants of the Railway, but only of their powers. Section 25 to Section 28 point out their duties, and make use of the terms " legally bound to do, " and " legally prohibited from doing, " and Section 29 explains these terms and " servant."

40. This Section must be read in connection with those preceding; and the meaning of the Section is this, " that every person employed upon the " Railway by the Company shall be legally bound to conform to all regula- " tions framed, by competent authority, for securing the safety of the public, " just as if he were actually a servant of the company; and if he violate " these rules, he shall be liable to punishment, in like manner with a true " servant of the Company."

41. In fact, for a particular purpose, *i. e., quoad* an obligation to secure the safety of the public, any person employed on the Railway by the Company, is to be deemed a servant of the Company.

42. If it had been further intended that persons so employed should also be deemed Railway servants for all purposes, that is, both as to duties to be performed towards the public, and as to powers to be exercised for the Company's benefit, the word servants would have been defined in the " general construction clause " at the end of the Act, and not at the end of a special construction clause.

43. To recapitulate briefly; a Railway servant, proper, can apprehend a traveller, and after apprehension discharge him with or without security, as he thinks required by the interests of the Company. A Police Officer, or any third person, may act in the same manner as a Railway Servant at his request and by his authority. Either may refuse to act, but if he acts at all, is bound to act in conformity with the lawful directions of the Railway servant: and the Police Officer, acting under Section 24 in his private capacity, is not bound by the rules of Criminal Procedure, as to

discharging persons apprehended; and finally, as regards powers which may be exercised, under the Act, by servants of the Company, a Railway Police Officer is not a "servant" within the meaning of the Sections which confer them. A little reflection will show that the general powers of a Police Officer, as laid down in the Procedure Code and the General Police Act, will in every instance enable Police Officers employed on the Railway to render such assistance to the servant of the Railway as may reasonably be expected or demanded.

44. The Police Officer employed by the Railway Company is identical with the Police Officer employed elsewhere, as to his powers and duties, with some additional duties arising from the peculiar circumstances attending his new sphere of action, and which are imposed by law on him, in common with all persons similarly situated. He continues to be the servant of the public, though serving on the premises of the Railway Company: he is not the servant of the Railway Company (except in so far as they form a section of the general public), and therefore is not competent to exercise powers conferred upon such servants, though he has some duties to the public in common with them.

45. As to question (*d.*), I need only express my concurrence generally with the opinion you express. The place of detention is wholly immaterial, the essence of arrest lies in the coercion of another's will, in interference with his liberty of action.

46. Question (*c.*) alone remains. The point is one that rather concerns the Railway Company and their Civil responsibility, than the Police. Whether or not a Railway official can legally detain a passenger's luggage, for his fare, without his consent, there is no doubt that a Police Officer cannot; and, in my opinion, it is almost equally certain that a Railway official has no such legal power.

47. In conclusion, I wish to remark that I have attempted to sketch what I believe to be the true legal position of a Railway Servant, and of a Railway Police Officer. The powers of the former are tolerably clear; the latter's status, as he is in appearance the servant of two masters, has been less easy to determine. The difficulty is aggravated by the fact, that neither the Railway nor the Police Act appears to have contemplated the particular case of Police officers, employed on a Railway; and it is only

by the application of general principles, *that their powers and duties, when* so employed, can be ascertained.

48. It will no doubt appear that Railway servants have exceptionally large powers accorded to them, under the Railway Act, and there is no doubt they have; but I think it is intended they should have, owing to the very exceptional circumstances in which they are placed.

49. On the abuse of these powers there are two checks—one the liability, Civil and Criminal, of those who abuse them, or who authorize their abuse—and the other the supervision of the superior officers of the Railway.

50. In a country where the former of these checks is notoriously weak, in comparison with England, where the lower classes are far more independent and jealous of any abuse of authority which interferes with their personal liberty, and officials are correspondingly cautious in their acts, it is surely proper to expect that those who have the power to do so, should exercise most stringently the second check, for their own credit, as well as their own advantage.

P. S.—The Madras Jurist for January 1870, contains an opinion of the Advocate General of Madras, which is to some extent in point. A copy is forwarded for information.

MADRAS JURIST, JANUARY 1870, page 35.

From the Government Solicitor, to the Chief Secretary to Government, Fort St. George, dated Madras, 2nd December 1869, *No.* 662.

I have the honor to acknowledge the receipt of the order of Government noted in the margin, * together with its enclosures, requesting the Advocate General's opinion as to the mode of procedure in cases of over-riding on Railways under Act XVIII of 1854.

* Dated 25th November 1869, and made on letter from the Magistrate Trichinopoly to Government, dated 15th November 1869, No. 62.

2. I submitted the matter for the consideration of the Advocate General, and have also conferred with him thereon; and

3. I now forward a copy of his opinion, and return the enclosures above noted.

Opinion.

When a person "Over-rides" he is liable, under Section 3 of Act XVIII of 1854 to a fine.

2. By Section 24, when the name and address of such person is unknown, or they have reason to apprehend that the offender will abscond, the officers, or servants of the Railway, may themselves apprehend such offender without warrant, or may call upon any Police Officer or other person to assist them in so doing; and in such cases the offender is to be detained until he can be placed before a Magistrate according to law, or give sufficient security for appearance, or be otherwise duly discharged by law.

3. The Police cannot take the initiative; but their assistance having been called for by the officers or servants of the Railway Company, they are bound to act as above. Nor do I think that it would be proper for the Police, when once such an offender was in their custody, to release him without placing him before a Magistrate, or taking security from him on the ground that his name and address were known to them. As I read the section, if the name and address of the offender are unknown to the Railway officers and servants, it is for them to act, and the Police are merely the subsidiary agency for carrying out the act of the Railway officers or servants. If the Police subsequently released the offender without the consent of the Railway authorities, on the grounds that his name and address were known to them, though not to the officers of the Railway Company, they would do so on their own responsibility.